

## ORDINANCE NO. 4

Series 2021

May 4, 2021: Introduced as Council Bill 4, Series 2021 by Mayor Pro Tem Katy Brown, seconded by Councilor Randy Weil and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

May 18, 2021: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

### **A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING ARTICLE I OF CHAPTER 2 OF THE MUNICIPAL CODE TO ESTABLISH A PROCESS TO ADDRESS COMPLAINTS ARISING OUT OF MUNICIPAL CAMPAIGN FINANCE MATTERS**

WHEREAS, the City of Cherry Hills Village (the "City") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution and the Home Rule Charter of the City of Cherry Hills Village ("Charter"); and

WHEREAS, Section 13.15 of the Charter states that the statutes of the State of Colorado governing municipal cities apply to the City unless otherwise provided by this Charter or by ordinances adopted by the City Council; and

WHEREAS, neither the Charter nor the Cherry Hills Village Code contain provisions regulating municipal campaign finance matters; and

WHEREAS, the City has operated under the applicable provisions of Article XXVIII of the Colorado Constitution, entitled Campaign and Political Finance ("Article XXVIII") and Title 1, Article 45, C.R.S., known as the Fair Campaign Practices Act ("FCPA"); and

WHEREAS, the FCPA previously required complaints regarding municipal campaign finance violations to be filed with and resolved by the Colorado Secretary of State; and

WHEREAS, Senate Bill 19-232 amended the FCPA by adding Section 1-45-111.7, C.R.S., which provides that, as of July 1, 2019, any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the applicable municipality; and

WHEREAS, pursuant to Colorado regulations concerning campaign and political finance, 8 CCR 1505-6, "municipal campaign finance matter" as used in section 1-45-111.7(9)(b), C.R.S., means any campaign finance matter exclusively related to a municipal campaign, including matters involving a candidate for a municipal office; a municipal ballot issue or ballot question; and contributions or expenditures made by any person, committee, or group to support or oppose any candidate for municipal office, or municipal ballot issue or ballot question, which definition applies to all municipalities; and

WHEREAS, to comply with Colorado law and regulations, the City Council desires to establish a process to address complaints arising out of City campaign finance matters.

### **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:**

**Section 1. Incorporation of Recitals.** The foregoing recitals are hereby incorporated herein by this reference as findings of the City Council.

**Section 2. Municipal Campaign Finance Enforcement.** Article 1, Chapter 2 of the City of Cherry Hills Village Municipal Code, titled "Elections", is hereby amended to add Section 2-1-60 and Section 2-1-70, to read in full as follows:

#### **Sec. 2-1-60. – Applicable law for campaign and political finance in City elections.**

Except to the extent that a direct and irreconcilable conflict with the provisions of this Article exists, in which case the provisions of this Article shall prevail, the Fair Campaign Practices Act (Section 1-45-101, *et seq.*, C.R.S.), as such provisions shall be amended from time to time and as such provisions are applicable to municipal elections, shall apply to and govern all City elections.

**Sec. 2-1-70. - Municipal campaign finance enforcement.**

- (a) Any person who believes that a municipal campaign finance violation under Article XXVIII of the Colorado Constitution or under Article 45 of Title 1, C.R.S., commonly known as the "Fair Campaign Practices Act" or "FCPA," has occurred in a City election may file a written complaint with the City Clerk in conformance with subsection (b) below. A written complaint shall be filed with the City Clerk no later than thirty (30) days after the person knew or should have known, by the exercise of reasonable diligence, of the alleged violation. This Section 2-1-70 shall apply to violations arising out of a municipal campaign finance matter, which refers to any matter exclusively related to a municipal campaign, including matters involving a candidate for a municipal office; a municipal ballot issue or ballot question; and contributions or expenditures made by any person, committee, or group to support or oppose any candidate for municipal office, or municipal ballot issue or ballot question.
- (b) Written complaints shall be filed on a form provided by the City Clerk and shall include the following:
- (1) The name, address, e-mail address, telephone number, and signature of the complainant (and, if complainant is represented by legal counsel, legal counsel's name, address, e-mail address, telephone number, and signature);
  - (2) The name and, if known, the telephone number and address of the person alleged to have committed a violation (the "respondent"); and
  - (3) The particulars of the violation and any available documentation or evidence supporting the allegation.
- (c) If an incomplete complaint is received, the date on which the originally filed complaint was received is considered the filed date if a complete copy is received within three (3) business days of notification from the City Clerk that the complaint was incomplete.
- (d) Initial Review. The City Clerk shall review the complaint within fifteen (15) business days of receipt and within such timeframe shall take one (1) or more of the following actions:
- (1) The City Clerk shall dismiss a complaint if the City Clerk determines, upon consultation with the City Attorney, that the complaint:
    - (i) was not timely filed under Section 2-1-70(a);
    - (ii) has not identified one or more specific violations of Article XXVIII of the Colorado Constitution or the FCPA pertaining to a municipal campaign finance matter, or any rules promulgated by the City Clerk concerning municipal campaign finance matters; or
    - (iii) does not allege specific facts or provide information sufficient to support a legal and factual basis for the complaint.In the case of dismissal, the City Clerk shall notify the complainant and respondent of the reasons for dismissal in writing. The City Clerk's dismissal is a final decision, and subject to review under Rule 106 of the Colorado Rules of Civil Procedure.
  - (2) If the City Clerk determines that the complaint alleges one (1) or more curable violations, the City Clerk will notify the respondent and provide an opportunity to cure in accordance with Subsection (e).
  - (3) If the City Clerk determines that the complaint alleges one (1) or more violations, asserts facts, or provides information sufficient to support the alleged violations but that may require additional factual finding(s) or legal interpretation, and that the asserted violations may not be curable as described in Subsection (e), the City Clerk will take the actions set forth in Subsection (f).
- (e) Curing violations.
- (1) Upon the City Clerk's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the City Clerk will notify the respondent by e-mail, or by registered mail or certified mail, return

receipt requested, if e-mail is unavailable, of the curable deficiencies alleged in the complaint.

- (2) Respondent shall have ten (10) business days from the date the notice is mailed to cure any deficiencies specified in the notice.
  - (3) The City Clerk may ask the respondent to provide additional information and may grant extension(s) of time upon written request by respondent.
  - (4) After the period for cure, the City Clerk will determine, within five (5) business days, whether the respondent cured the violation(s), and if so, whether the respondent substantially complied with respondent's legal obligations under Article XXVIII of the Colorado Constitution or the FCPA pertaining to municipal campaign finance matters ("legal requirements").
    - (i) If the City Clerk determines that the respondent substantially complied with the legal requirements, the City Clerk will dismiss the complaint.
    - (ii) If the City Clerk determines that the respondent did not substantially comply with the legal requirements, the City Clerk will take action as set forth in Subsection (f).
    - (iii) The City Clerk's determination under this Subsection (e)(4) is a final decision and subject to review under Rule 106 of the Colorado Rules of Civil Procedure.
  - (5) In determining whether respondent "substantially complied" pursuant to this Subsection (e), the City Clerk shall consider:
    - (i) The extent of the noncompliance;
    - (ii) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance;
    - (iii) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
- (f) Hearing officer, hearing, and determination.
- (1) When the City Clerk is required to take further action as set forth in Subsections (d)(3) or (e)(4)(ii), the City Clerk shall notify the City Manager of the complaint, and the City Manager, in consultation with the City Clerk and the City Attorney, shall refer the complaint to an independent hearing officer to hear and determine such complaint. Such referral shall occur within ten (10) business days of the City Clerk's determination pursuant to Subsections (d)(3) or (e)(4)(ii).
  - (2) The hearing officer shall schedule a hearing to be held within fifteen (15) calendar days of referral of the complaint to the hearing officer.
  - (3) The City Clerk shall send notice of the hearing and any applicable rules governing the hearing process to the complainant and to the respondent, who shall also receive a copy of the complaint received by the City Clerk, within two (2) business days of the date of referral of the complaint to the hearing officer. The City Clerk may send notice by e-mail to the address of the complainant shown on the complaint form and to the respondent at the address provided by respondent. If e-mail is unavailable, the City Clerk shall send notice by registered mail or certified mail, return receipt requested.
  - (4) Upon the request of either party, the hearing officer may issue an administrative subpoena requiring the attendance of a witness or party in relation to an alleged municipal campaign finance violation, which shall be served on the party to whom it is directed by the requesting party pursuant to Rule 4 of the Colorado Rules of Civil Procedure. It shall be unlawful for a witness or party to fail to comply with such a subpoena, and any person convicted of a violation hereof shall be punished in accordance with Section 1-4-20 of this Code.

- (5) The hearing officer may grant the respondent a continuance of up to thirty (30) calendar days upon a showing of good cause.
- (6) The hearing shall be electronically audibly recorded and held in substantial accordance with Section 24-4-105, C.R.S., or such other rules as the City Clerk may have promulgated. At the hearing, complainant shall have the burden of proof to establish that a violation occurred under a preponderance of the evidence standard. Respondent and complainant may present evidence to the hearing officer in the form of testimony, documents, rebuttal testimony, and opening and closing statements.
- (7) Following the hearing, the hearing officer shall issue a written decision within seven (7) business days.
- (8) If the hearing officer determines that respondent violated Article XXVIII of the Colorado Constitution or the FCPA, the hearing officer's order shall include any appropriate order, sanction, or relief authorized hereunder and may include, without limitation, sanctions as follows:
  - (i) Impose a civil penalty of at least double, and up to five (5) times, the amount contributed, received, or spent in violation of any contribution prohibition or limitation or in violation of a contribution reporting requirement.
  - (ii) Impose a civil penalty of twenty-five dollars (\$25.00) per day for each day that a statement or other information required to be filed pursuant to Article XXVIII of the Colorado Constitution or the FCPA is not filed by the close of business on the day due.
  - (iii) Order disclosure of the source and amount of any undisclosed contributions or expenditures.
  - (iv) Order the return to the donor of any contribution made that was the subject of the violation.
- (9) The hearing officer's determination is a final decision subject to review under Rule 106 of the Colorado Rules of Civil Procedure.
- (g) Personal liability. Candidates shall be personally liable for penalties imposed upon the candidate's committee.
- (h) Collection of penalties. The City may collect civil penalties in accordance with applicable law, and may engage the use of a private collection agency.
- (i) Rules and regulations. The City Clerk, in consultation with the City Attorney, shall be authorized to adopt rules and regulations as may be required to implement the provisions of this Section 2-1-70.

**Section 3. Repeal.** Existing ordinances and resolutions or parts thereof covering the same matters as embraced in this ordinance are hereby repealed and any and all ordinances or parts of ordinances and resolutions in conflict or inconsistent with the provisions of this ordinance are hereby repealed provided, however, that the repeal of any ordinance or parts of ordinances and resolutions of the City of Cherry Hills Village shall not revive any other section of any ordinances or resolutions hereto before repealed or superseded, and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance.

**Section 4. Severability.** If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

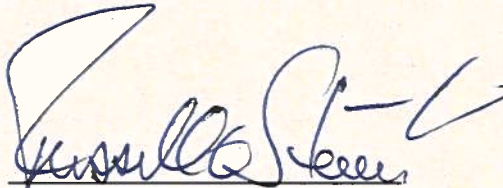
**Section 5. Codification Amendments.** The codifier of the City's Municipal Code, Municode, is hereby authorized to make such numerical and formatting changes as may be

necessary to incorporate the provisions of this ordinance within the Cherry Hills Village Municipal Code.

**Section 6. Effective Date.** This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 4 Series 2021, by the City Council of the City of Cherry Hills Village, Colorado this 18<sup>th</sup> day of May, 2021.

(SEAL)



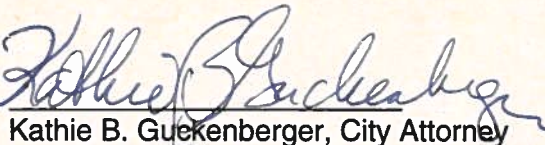
Russell O. Stewart, Mayor

ATTEST:

APPROVED AS TO FORM:



Laura Gillespie, City Clerk



Kathie B. Guekenberger, City Attorney

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CITY OF CHERRY HILLS  
VILLAGE  
ADOPTION OF ORDINANCE  
ORDINANCE 4, SERIES 2021

A BILL FOR AN ORDINANCE OF  
THE CITY OF CHERRY HILLS  
VILLAGE AMENDING ARTI-  
CLE 1 OF CHAPTER 2 OF THE  
MUNICIPAL CODE TO ESTAB-  
LISH A PROCESS TO ADDRESS  
COMPLAINTS ARISING OUT OF  
MUNICIPAL CAMPAIGN FINANCE  
MATTERS

Copies of the Ordinances are on  
file at the office of the City Clerk  
and may be inspected during regu-  
lar business hours.

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